

ESTTA Tracking number: **ESTTA103013**

Filing date: **10/06/2006**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91165449
Party	Defendant GoldWave Incorporated GoldWave Incorporated P.O. Box 51 CAX St. John's, Newfoundland, A1C 5H5
Correspondence Address	MYLENE DAO FLANSBERRY, MENARD & ASSOCIATES 504 KENT STREET, SUITE 200 OTTAWA, ONTARIO CANADA K2P 2B9, mylene@trade-mark.ca, rflansberry@trade-mark.ca
Submission	Other Motions/Papers
Filer's Name	Mylene Dao
Filer's e-mail	info@trade-mark.ca
Signature	/md/
Date	10/06/2006
Attachments	GOLDWAVE - MOTION - 4 PAGES - 06-10-06.pdf (4 pages)(36099 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of Application Serial No. 78/413775
For the Mark GOLDWA VE
Published in the Official Gazette on April 12, 2005

Bose Corporation,

Opposer

v.

GoldWave Incorporated,

Applicant

Opposition No. 91165449

A. MOTION TO TAKE TESTIMONIAL DEPOSITION IN A FOREIGN COUNTRY

Pursuant to Rule 703.01 (b) 37 CFR § 2.123 (2) of the Trademark Trial and Appeal Board Manual of Procedures (TBMP), the Applicant's authorized-officer, Mr. Christopher Craig, wishes to be examined orally in the City of Ottawa, in the Province of Ontario, Canada on October 11, 2006 at 10:00 a.m. at 200 Elgin Street, Suite 1004, Ottawa, Ontario, K2P 1L5, Canada.

WHEREAS, the Applicant's attorneys have communicated by e-mail with the Opposer's Attorneys at 3:36 p.m. on September 25, 2006.

WHEREAS, the e-mail message was opened and read by the Opposer's Attorneys at 4:06 p.m. the same day. The body of the message e-mailed by the Applicant's Attorneys reads as follows:

"We have made arrangements to take the testimonial deposition upon oral examination of Mr. Chris Craig, President of Goldwave Incorporated on the following day, date and location:

Wednesday, Oct. 11/06, at 10:00 a.m.
200 Elgin Street, Ottawa, Ontario, Canada.

Mr. Craig has chosen this locality in Canada, as he will be travelling in these parts of the country during that week.

We the believe that the date of Oct. 11/06 is a reasonable notice and we are cognizant that in keeping with Rule 703.01 (b) 37 CFR § 2.123 (2) which reads as follow:

37 CFR § 2.123 (2)

"A testimonial deposition taken in a foreign country shall be taken by deposition upon written questions as provided by § 2.124, unless the Board, upon motion for good cause, orders, that the deposition be taken by oral examination, if the parties so stipulate." (Highlights are 'ours');

At this time, we are seeking your client's approval to examine Mr. Craig orally in Ottawa, Ontario, Canada on Oct. 11/06 so that we can inform the II AB that the parties have agreed and have so stipulated to the oral examination. FYI, please let us know whether you would wish telephone conferencing to be made available to you for your cross-examination on that date. Upon confirmation from you, we will forward a copy of the Notice of Examination of Witness to the TTAB:

As of today's date, we have not received any communication from the Opposer's Attorneys,

THEREFORE~ in keeping with 37 eFR § 2.123 (2), we are today seeking the Board's approval to orally examine Mr. Craig in Ottawa, Ontario, Canada on Wednesday, October 11, 2006, at 10:00 a.m. at 200 Elgin Street, Suite 1004.

GOOD CAUSE

The applicant is aware that Mr. Craig's deposition could be completed by written questions as provided by § 2.124. However, it is the Applicant's submission that in view of the deadline of

Applicant: GoldWave Incorporated
Serial Nil. i&/413775
filed: May 5, 2004
Mark: GOLDW.AV!;
Pgnt::3

October 19, 2006 for the Applicant's testimony period to close and Mr. Craig business travel arrangements to Ottawa during that week, that it would be more economical, convenient and expeditious to proceed with Mr. Craig's deposition at this time.

B. MOTION TO EXTEND

The Applicant further requests that the Board extend the testimony and rebuttal testimony periods to allow the parties additional time to conduct testimony or reach an amicable solution of their dispute.

Accordingly, the Applicant requests that the testimony and rebuttal testimony periods be extended for sixty-one (61) days.

If granted, the new trial dates will be:

Applicant's Testimony to close:	December 19, 2006
Opposer's Rebuttal Testimony period to close:	February 2, 2007

The Applicant further requests that even if the Board denies the motion to hold an oral examination of a witness in a foreign country, the testimony periods for the opposition be extended in accordance with the schedule above.

The Opposer's attorneys consent has not been sought for this request to extend the periods.

Applicant: GoldWave Incorporated
SerialNo. i8/413775
Filed: May 5, 2006
Mark: GOLDWAVE
Tag:4

CONCLUSION

For the foregoing reasons, we respectfully request that the Board, upon this motion for good cause, orders that the deposition of Mr. Craig be taken by oral examination in a foreign country and grant that the trial dates be extended and conformed.

FLANSBERRY, MENARD & ASSOCIATES

Date: OCTOBER 6, 2006

M-----

Robert G. Bales

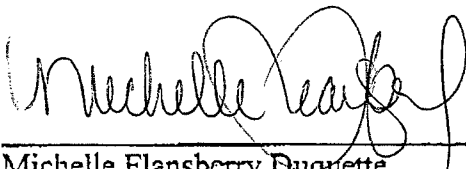
Attorneys for the Applicant

504 Kent Street
Ottawa, Ontario K2P2B9
Telephone: (613) 234-5280
Facsimile: (613) 236-4064

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing MOTION TO TAKE TESTIMONIAL DEPOSITION IN A FOREIGN COUNTRY and MOTION TO EXTEND have this 6th day of October 2006, been mailed by prepaid first class mail to the below-identified Attorney at his/her place of business

M~. Amy L. Brosius
FISH & RICHARDSON P.C.
225 Franklin Street
Boston, MA 02110
U.S.A.



Michelle Flansberry Duquette